



MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel
Chair

Steven Rosen
Vice Chair

June 10, 2019

Advisory Opinion 19-05-012

On May 31, 2019, the Ethics Commission received your request for a waiver in connection with your employment at both Suburban Hospital (Suburban), an entity that contracts with the Department of Health and Human Services (DHHS), and DHHS. Section 19A-12(b)(1) of the County's Public Ethics Law prohibits an employee from engaging in outside employment with an entity that contracts with the employee's agency unless the employee obtains a waiver from the Ethics Commission pursuant to 19A-8(b). You requested a waiver from the Ethics Commission on the basis that there is no actual conflict. For the reasons stated below, the Ethics Commission denies your request for a waiver.

You are a part time therapist in the Crisis Center operated by DHHS. Your role is to see Montgomery County residents who are referred to the center by themselves or other entities and assist them with crisis management or case management services as necessary. That process may include evaluating clients for being a possible safety risk or assisting them with getting information on various resources in Montgomery County. You are not a manager and do not provide clinical supervision to employees in your position at DHHS.

In your full-time position with Suburban as the Senior Treatment Coordinator, you render services to adolescent and adult clients who have been referred to Suburban due to substance abuse concerns. A source of funds for your work at Suburban is the contract between Suburban and the County. You do not handle any of the billing or financial aspects of the contract between DHHS and Suburban Hospital, but you report monthly to the Montgomery County contract monitor on the implementation and administration of the contract.

The Special Assistant to the Chief Operating Officer of DHHS, the person charged with approving these requests on behalf of the department, concurred in and supported the request for a waiver and recommended to the Ethics Commission that it approve the waiver. The Commission understands that your County position would not materially impact the contract between DHHS and the outside employer. (This type of conflict of interest would be covered by 19A-11(a)(1) of the Public Ethics Law and is not an issue here.)

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The County ethics law provision at issue, 19A-12(b)(1)(B), specifically prohibits outside employment with a business that contracts with an employee's agency. This prohibition addresses the conflicts of interest or appearances of conflicts of interest that arise from employees profiting in their private employment from actions of their County colleagues who may be positioned to confer benefits through contract awards and administration. The law is intended to keep others in County government from taking action or appearing to take action that create or enhance employment opportunities and benefits for colleagues in their agency. The negative appearance to the public of employees profiting privately from agency action is an important harm the statutory provision is intended to address. The law is also intended to prevent the use or appearance of use of County employees to advance the interests of outside employers in their dealings with the County. Where there is a direct involvement in the administration of a contract by a DHHS employee while working with an outside employer, the Commission will closely scrutinize a waiver request. In this particular case, the Commission notes that the DHHS employee is assigned the duty of communicating with DHHS on behalf of the outside employer with regard to the very contract triggering application of the prohibition of 19A-12(b)(1)(B). The Commission could not, therefore, reach a conclusion that there was no actual conflict of interest pursuant to 19A-8(b)(3). Accordingly, the Ethics Commission denies the request for a waiver sought on the basis of no actual conflict of interest due to the Commission's conclusion that the work you would be doing at the outside employer is sufficiently related to management of the contract between the DHHS and the outside employer to establish the actual conflict of interest that 19A-12(b)(1)(B) is intended to prevent.

The Commission notes that a waiver can be granted for prohibited outside employment if the waiver is necessary to assure competent services to a County agency or that the failure to retain services would limit the County agency's ability to hire and retain qualified personnel. (See 19A-8(b)(1) and (2)). After inquiry by Ethics Commission staff to the Special Assistant to the Chief Operating Officer, DHHS would not represent that the waiver was needed to assure competent services to the County or that the failure to retain your services would limit the DHHS's ability to hire and retain qualified personnel. As such, a waiver could not issue on either of these bases.

If you have any questions, please contact Ethics Commission staff at 240-777-6670.

For the Commission:



Rahul Goel, Chair